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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,253	04/01/2004	Julio A. Abusleme	108910-00129	6955

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EXAMINER

ZEMEL, IRINA SOPHIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,253

Applicant(s)

ABUSLEME ET AL.

Examiner

Irina S. Zemel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The ODP rejection is withdrawn in view of Terminal Disclaimer filed by the applicants.

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8, 14-16, 18-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Patent publication 20010003124 to Zolotnitsky et al., (hereinafter "Zolotnitsky").

The rejection stands as per reasons of record. Insofar as the particle size of the disclosed POLYMIST, all six grades of this product available from Solvay fully correspond to the claimed characteristic. See attached Polymist PTFE datasheet from Solvay. It is further believed all of the existing Polymist grades are irradiation treated PTFE. Moreover, at least 5 of the six disclosed grades have molecular weights of the same or lower than the F5A grade used by the applicants in their examples as evident from MFI's of the Polymist grades. Even if, *arguendo*, the actual example of the Zolotnitsky reference used the only one Polymist grade that may not fall within the claimed molecular weight range, the ones that do (five out of six) are clearly envisaged from the genus of six Polymist grades. (Similarly, even if, not all of the grades are

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irradiated materials, those that are would have been clearly envisaged from the disclosed genus of six grades).

Claim Rejections - 35 USC § 103

Claims 11-13, 17, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky.

The rejection stands as per reasons of record.

Response to Arguments

Applicant's arguments filed 8-4-2006 have been fully considered but they are not persuasive. The applicants argue that they "respectfully disagree with the Examiner's statement that "[t]he reference further exemplifies addition of POLYMIST brand PTFE ...[as] ... powdered and irradiated PTFE with the particles [size] and other characteristics fully corresponding to the claimed characteristics" (paragraph bridging pages 3-4 of the Office Action)." See page 2 of the applicants' response. First of all, the quotation from the Office Action is cropped and totally misrepresented. The examiner NEVER said the reference disclosed or exemplified the POLYMIST "...[as] ... powdered and irradiated PTFE with the particles [size] and other characteristics fully corresponding to the claimed characteristics". What the examiner in fact stated, is that "It is believed that the POLYMIST PTFE which is commercially available from Ausimont which is used in the examples of Zolotnitsky is a powdered and irradiated PTFE with the particle size and other characteristics fully corresponding to the claimed characteristics". While the exact grade of the POLYMIST used in the reference is not disclosed, all of the six POLYMIST grade PTFE available from Solvay Solexis, indeed

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are irradiation treated PTFE particles and all six grades have particle sizes that fully correspond to the claimed particle size. In addition at least five out of six graded have necessary molecular weights. See discussion above. Therefore, it is immaterial whether the reference expressly discloses any of the claimed physical characteristics (which the examiner wishes to emphasize again, she never alleged the reference does disclose such properties), so long as the disclosed product inherently exhibits the claimed characteristics. Should the applicants have factual evidence to the contrary, the applicants should present the evidence distinguishing the claimed component B from the POLYMIST disclosed in the reference. The arguments that some property is not disclosed, as discussed above, are immaterial and irrelevant.

The argument regarding the POLYMIST disclosed in the reference being an optional component, or disclosed as filler are also irrelevant to the patentability of the claimed composition. The reference may call a component whatever they choose to call it, however, if the components is physically the same, and if addition of this component is expressly disclosed – it is the same composition regardless of what purpose the component may serve in the disclosed compositions.

The reference is silent to the properties of the foams that may be obtained from the compositions, however, once again, those properties are considered inherent properties of the foams that would have been obvious to produce from the compositions disclosed by Zolotnistky.

The applicants argue that the illustrative example 6 does not anticipate the claimed invention as it discloses copolymers with much lower content of CTFE co-

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monomers. The examiner agrees that this specific example does not anticipate all of the claimed limitations, further noting that the examiner never alleged anticipation of the claimed invention by any of the specific illustrative examples of the reference. Once again, the applicants take examiners statement out of the context and misinterpret them. The examiner alleged that both the claimed components (A) and (B) are expressly disclosed in the reference as a whole, and, with further expressed disclosure of addition of component (B) (even as optional component) to compositions comprising (A), the claimed invention is at least fully obvious, if not fully anticipated by the reference expressly disclosing two main components identical to the claimed components.

The arguments regarding "filler" versus the claimed "nucleatin agent" have been addressed above. Once again, it is immaterial what purpose this component serves in the disclosed compositions. Since the component is the same, it must, necessarily, have the claimed "nucleating" function once mixed with expressly disclosed copolymers of high CTFE content.

The invention as claimed, thus, is still considered to have been unpatentable over the cited reference.

Request for information

The instant application and referenced Zolotnitsky PG Publication have common assignee and several common inventors. Therefore, it is requested that the applicants provide detailed information regarding the POLYMIST PTFE used in example 6 of the referenced PG Publication, including its grade, all the physical properties, such as

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particle size, molecular weight and irradiation treatment and the commercial source of the used POLYMIST. This information is necessary to determination of patentability issues of the instant applications.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

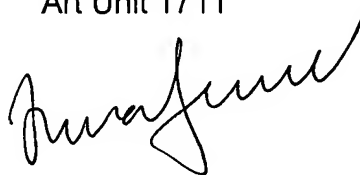
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Irina S. Zemel
Primary Examiner
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